

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VERNON UNSWORTH,
Plaintiff,
vs.
ELON MUSK,
Defendant.

Case No. 2:18-cv-08048

[JOINTLY PROPOSED]
PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3,

1 below, this Protective Order does not entitle the parties to file confidential
2 information under seal. Rather, when the parties seek permission from the court to
3 file material under seal, the parties must comply with Civil Local Rule 79-5 and
4 with any pertinent orders of the assigned District Judge and Magistrate Judge.

5 **B. GOOD CAUSE STATEMENT**

6 In light of the nature of the claims and allegations in this case and the parties'
7 representations that discovery in this case will involve the production of confidential
8 records, and in order to expedite the flow of information, to facilitate the prompt
9 resolution of disputes over confidentiality of discovery materials, to adequately
10 protect information the parties are entitled to keep confidential, to ensure that the
11 parties are permitted reasonable necessary uses of such material in connection with
12 this action, to address their handling of such material at the end of the litigation, and
13 to serve the ends of justice, a protective order for such information is justified in this
14 matter. The parties shall not designate any information/documents as confidential
15 without a good faith belief that such information/documents have been maintained
16 in a confidential, non-public manner, and that there is good cause or a compelling
17 reason why it should not be part of the public record of this case.

18 **2. DEFINITIONS**

19 **2.1 Action:** The instant action: *Unsworth v. Musk.*

20 **2.2 Challenging Party:** a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 **2.3 “CONFIDENTIAL” Information or Items:** information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
25 the Good Cause Statement.

26 **2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”**

27 **Information or Items:** extremely sensitive “CONFIDENTIAL” Information or
28 Items, the disclosure of which to another Party or Non-Party would create a

1 substantial risk of serious harm that could not be avoided by less restrictive means.

2 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
3 their support staff).

4 2.6 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
7 ONLY.”

8 2.7 Disclosure or Discovery Material: all items or information, regardless
9 of the medium or manner in which it is generated, stored, or maintained (including,
10 among other things, testimony, transcripts, and tangible things), that are produced or
11 generated in disclosures or responses to discovery in this matter.

12 2.8 Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this Action.

15 2.9 House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a
21 party to this Action but are retained to represent or advise a party to this Action and
22 have appeared in this Action on behalf of that party or are affiliated with a law firm
23 which has appeared on behalf of that party, and includes support staff.

24 2.12 Party: any party to this Action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.14 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
7 ATTORNEYS’ EYES ONLY.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 3. SCOPE

11 The protections conferred by this Order cover not only Protected Material (as
12 defined above), but also (1) any information copied or extracted from Protected
13 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
14 and (3) any deposition testimony, conversations, or presentations by Parties or their
15 Counsel that might reveal Protected Material, other than during a court hearing or at
16 trial.

17 Any use of Protected Material during a court hearing or at trial shall be
18 governed by the orders of the presiding judge. This Order does not govern the use
19 of Protected Material during a court hearing or at trial.

20 4. DURATION

21 Even after final disposition of this litigation, the confidentiality obligations
22 imposed by this Order shall remain in effect until a Designating Party agrees
23 otherwise in writing or a court order otherwise directs. Final disposition shall be
24 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
25 or without prejudice; and (2) final judgment herein after the completion and
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
27 including the time limits for filing any motions or applications for extension of time
28 pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions), that the Producing Party affix
26 at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
27 ATTORNEYS' EYES ONLY" to each page that contains protected material. If
28 only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine which
9 documents, or portions thereof, qualify for protection under this Order. Then,
10 before producing the specified documents, the Producing Party must affix the
11 “CONFIDENTIAL”, or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
12 ONLY” legend to each page that contains Protected Material. If only a portion or
13 portions of the material on a page qualifies for protection, the Producing Party also
14 must clearly identify the protected portion(s) (e.g., by making appropriate markings
15 in the margins).

16 (b) for testimony given in depositions that the Designating Party identifies
17 on the record, before the close of the deposition as protected testimony.

18 (c) for information produced in some form other than documentary and
19 for any other tangible items, that the Producing Party affix in a prominent place on
20 the exterior of the container or containers in which the information is stored the
21 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
22 EYES ONLY.” If only a portion or portions of the information warrants protection,
23 the Producing Party, to the extent practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
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1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 **Timing of Challenges.** Any Party or Non-Party may challenge a
5 designation of confidentiality at any time that is consistent with the Court's
6 Scheduling Order.

7 6.2 **Meet and Confer.** The Challenging Party shall initiate the dispute
8 resolution process under Local Rule 37-1 et seq.

9 6.3 The burden of persuasion in any such challenge proceeding shall be on
10 the Designating Party. Frivolous challenges, and those made for an improper
11 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
12 parties) may expose the Challenging Party to sanctions. Unless the Designating
13 Party has waived or withdrawn the confidentiality designation, all parties shall
14 continue to afford the material in question the level of protection to which it is
15 entitled under the Producing Party's designation until the Court rules on the
16 challenge.

17 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 Action only for prosecuting, defending, or attempting to settle this Action. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the Action has been terminated, a
23 Receiving Party must comply with the provisions of Section 13 below.

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 **Disclosure of "CONFIDENTIAL" Information or Items.** Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
4 well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of
7 the Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) private court reporters and their staff to whom disclosure is reasonably
13 necessary for this Action and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A);

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the
21 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
22 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A); and (2) they will not be permitted to keep any confidential information
24 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
25 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal Protected
27 Material may be separately bound by the court reporter and may not be disclosed to
28 anyone except as permitted under this Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
2 ONLY,” that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification
4 shall include a copy of the subpoena or court order unless prohibited by law;

5 (b) promptly notify in writing the party who caused the subpoena or order
6 to issue in the other litigation that some or all of the material covered by the
7 subpoena or order is subject to this Protective Order. Such notification shall include
8 a copy of this Protective Order; and

9 (c) cooperate with respect to all reasonable procedures sought to be
10 pursued by the Designating Party whose Protected Material may be affected.

11 If the Designating Party timely seeks a protective order, the Party served with
12 the subpoena or court order shall not produce any information designated in this
13 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
14 EYES ONLY” before a determination by the court from which the subpoena or
15 order issued, unless the Party has obtained the Designating Party’s permission, or
16 unless otherwise required by the law or court order. The Designating Party shall
17 bear the burden and expense of seeking protection in that court of its confidential
18 material and nothing in these provisions should be construed as authorizing or
19 encouraging a Receiving Party in this Action to disobey a lawful directive from
20 another court.

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
22 PRODUCED IN THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a
24 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by
26 Non-Parties in connection with this litigation is protected by the remedies and relief
27 provided by this Order. Nothing in these provisions should be construed as
28 prohibiting a Non-Party from seeking additional protections.

5 (1) promptly notify in writing the Requesting Party and the Non-Party
6 that some or all of the information requested is subject to a confidentiality
7 agreement with a Non-Party;

13 (c) If a Non-Party represented by counsel fails to commence the process
14 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
15 notice and accompanying information or fails contemporaneously to notify the
16 Receiving Party that it has done so, the Receiving Party may produce the Non-
17 Party's confidential information responsive to the discovery request. If an
18 unrepresented Non-Party fails to seek a protective order from this court within 14
19 days of receiving the notice and accompanying information, the Receiving Party
20 may produce the Non-Party's confidential information responsive to the discovery
21 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
22 not produce any information in its possession or control that is subject to the
23 confidentiality agreement with the Non-Party before a determination by the court
24 unless otherwise required by the law or court order. Absent a court order to the
25 contrary, the Non-Party shall bear the burden and expense of seeking protection in
26 this court of its Protected Material.

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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

11. INADVERTENT PRODUCTION OF PRIVILEGED OR
OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement into this Protective Order.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives

1 any right to object on any ground to use in evidence of any of the material covered
2 by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
5 orders of the assigned District Judge and Magistrate Judge. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in Section 4, within 60
12 days of a written request by the Designating Party, each Receiving Party must return
13 all Protected Material to the Producing Party or destroy such material. As used in
14 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected
16 Material. Whether the Protected Material is returned or destroyed, the Receiving
17 Party must submit a written certification to the Producing Party (and, if not the same
18 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
19 (by category, where appropriate) all the Protected Material that was returned or
20 destroyed and (2) affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries or any other format reproducing or capturing any
22 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
23 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
24 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
25 reports, attorney work product, and consultant and expert work product, even if such
26 materials contain Protected Material. Any such archival copies that contain or
27 constitute Protected Material remain subject to this Protective Order as set forth in
28 Section 4.

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

RESPECTFULLY SUBMITTED,

Dated: June 27, 2019

QUINN EMANUEL URQUHART
& SULLIVAN, LLP
Alex Spiro
Robert M. Schwartz
Michael T. Lifrak
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By: /s/ *Alex Spiro*

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L. Lin Wood
Attorneys for Plaintiff Vernon Unsworth

1 **IT IS SO ORDERED.**
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3 DATED:
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Honorable Jacqueline Chooljian
United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Unsworth v. Musk*. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: